

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

#### CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES

*Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 on page 660.) The Governor's Office authorized the notice to proceed through the rulemaking process on February 9, 2010.*

[R10-41]

#### PREAMBLE

**1. Sections Affected**

R20-2-101  
R20-2-102  
R20-2-104  
R20-2-601  
R20-2-901  
R20-2-910

**Rulemaking Action**

Amend  
Amend  
Amend  
Amend  
Amend  
Amend

**2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-2065(A)(4)

Implementing statute: A.R.S. §§ 41-2065(E), 41-2066, 41-2067(H), and 41-2094

**3. List of all previous notices appearing in the *Register* addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 16 A.A.R. 535, April 2, 2010

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Duane Yantorno  
Address: Department of Weights and Measures  
4425 W. Olive Ave., Suite 134  
Glendale, AZ 85302  
Telephone: (602) 771-4933  
Fax: (623) 939-7825  
E-mail: Dyantorno@azdwm.gov

**5. An explanation of the rules, including the agency's reasons for initiating the rulemaking:**

In Article 1, the Department increases metrology laboratory fees and updates materials incorporated by reference. In Article 6, the Department establishes qualifications and duties for two classifications of vapor recovery registered service representatives. In Article 9, the Department incorporates by reference additional vapor recovery tests.

**6. A reference to any study relevant to the rules that the agency reviewed and either proposes to rely on or not to rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The Department reviewed the 2008 State Laboratory Program Workload Survey issued by the National Institute of Standards and Technology on March 30, 2009. A copy of the study is available at [www.nist.gov](http://www.nist.gov). The Department used the survey results to assess the reasonableness of the proposed fee increase for the Department's Metrology Laboratory.

Notices of Proposed Rulemaking

**7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The update of incorporated materials from the National Institute of Standards and Technology will have minimal economic impact. The materials are available without charge online so those who must ensure that commercial devices comply with the incorporated standards will incur little expense to obtain a copy of the standards. The updated materials contain few changes that will have economic impact.

The newly incorporated material from the California Air Resources Board will have minimal economic impact. The materials are available without charge online. However, registered service agencies and their representatives will incur the expense of learning to perform the new vapor recovery test procedures.

The increase in fees charged by the Department's Metrology Laboratory, which is one of only 18 laboratories nationally to be accredited by the National Voluntary Laboratory Accreditation Program, will have economic impact on registered service agencies and private industries that have standards certified by the Metrology Laboratory. The Department has not increased these fees since 1983. The more than 6,800 calibrations provided annually by the Metrology Laboratory are a critical part of the U.S. measurement infrastructure. Data from the National Institute of Standards and Technology show that the fees charge in 2008 by the Department's Metrology Laboratory are among the lowest in the nation. With this increase, fees charged by the Metrology Laboratory will still be below the 2008 national average for the 43 states that provided data to the NIST. Paying for the calibrations is a cost of doing business that will be passed to consumers by registered service agencies.

At the request of industry and under the authority provided by A.R.S. § 41-2065(E), the Department is establishing two categories of vapor recovery registered service representatives who perform tests or repairs on vapor recovery systems or vapor recovery components. A vapor recovery registered service representative No. 2 is an individual allowed to perform only specific tests on specific systems or pieces of equipment. A vapor recovery registered service representative No. 1 is an individual allowed to perform any vapor recovery test, including the required annual vapor recovery test. It is believed this distinction will expand the pool of individuals qualified to perform specific tests on specific equipment allowing the equipment to be placed back into service more quickly. This will have a positive economic benefit for those qualified to act as a vapor recovery registered service representative No. 2 and for those who have equipment placed back in service quickly.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Duane Yantorno  
Address: Department of Weights and Measures  
4425 W. Olive Ave., Suite 134  
Glendale, AZ 85302  
Telephone: (602) 771-4933  
Fax: (623) 939-7825  
E-mail: Dyantorno@azdwm.gov

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rules or, if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rules:**

An oral proceeding regarding the proposed rules will be held as follows:

Date: Thursday, June 10, 2010  
Time: 10:00 a.m.  
Location: 4425 W. Olive Ave., Suite 134  
Glendale, AZ 85302

The rulemaking record will close at 5:00 p.m. on June 11, 2010.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

Under A.R.S. § 41-2065(E), the director of the Department is required to consult with the director of the Department of Environmental Quality regarding the rules. This consultation has occurred. Under the state's implementation plan, the changes to Article 9 will have to be submitted to the EPA for approval.

**12. Incorporations by reference and their location in the rules:**

*Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, 2010, United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST)

Handbook 44, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov incorporated at R20-2-101

*Uniform Laws and Regulations in the Areas of Legal Metrology and Engine Fuel Quality*, 2009, United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov incorporated at R20-2-101

*Checking the Net Contents of Packaged Goods*, 2005, United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, Government Printing Office, P.O. Box 979050, St. Louis, MO 63197-9000 or bookstore.gpo.gov incorporated at R20-2-101

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, CA 95812-2815 incorporated at R20-2-901

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, CA 95812-2815 incorporated at R20-2-901

California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, CA 95812-2815 incorporated at R20-2-901

**13. The full text of the rules follows:**

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE**

**CHAPTER 2. DEPARTMENT OF WEIGHTS AND MEASURES**

**ARTICLE 1. ADMINISTRATION AND PROCEDURES**

- Section  
R20-2-101. Definitions  
R20-2-102. Metrology Laboratory Testing and Calibration Fees  
R20-2-104. Administrative Enforcement Action

**ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES**

- Section  
R20-2-601. Qualifications; License and Renewal Application Process

**ARTICLE 9. GASOLINE VAPOR CONTROL**

- Section  
R20-2-901. Material Incorporated by Reference  
R20-2-910. Annual Inspection and Testing

**ARTICLE 1. ADMINISTRATION AND PROCEDURES**

**R20-2-101. Definitions**

The definitions in A.R.S. §§ 41-2051, 41-2065, 41-2085, 41-2121, and 41-2131 and the following definitions apply to this Chapter:

1. No change
2. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
  - h. No change
  - i. No change
3. No change
4. No change

Notices of Proposed Rulemaking

5. No change
6. No change
7. No change
8. No change
9. No change
  - a. No change
  - b. No change
  - c. No change
10. No change
11. No change
12. “Handbook 44” means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 44, *Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices*, Government Printing Office, ~~Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0004~~ P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov) (2003 2010 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
13. “Handbook 112” means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 112, *Examination Procedure Outlines for Commercial Weighing and Measuring Devices*, Government Printing Office, ~~Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0004~~ P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov) (2002 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
14. “Handbook 130” means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 130, *Uniform Laws and Regulations*, Government Printing Office, ~~Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0004~~ P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov) (2003 2009 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions or amendments.
15. “Handbook 133” means the United States Department of Commerce, Technology Administration, National Institute of Standards and Technology (NIST) Handbook 133, *Checking The Net Contents of Packaged Goods*, Government Printing Office, ~~Superintendent of Documents, Mail Stop SSOP, Washington, D.C. 20402-0004~~ P.O. Box 979050, St. Louis, MO 63197-9000 or [bookstore.gpo.gov](http://bookstore.gpo.gov) (January 2003 2005 edition), incorporated by reference and on file with the Department. This incorporation by reference contains no future editions and amendments.
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. “~~Placed-in-service~~ Placed in service” means the certification by a registered service agency or representative that a commercial device may be used, unless the Department orders otherwise.
26. “~~Placed In Service Report~~ Placed-in-service report” means the form that a registered service representative completes and submits to the Department after placing a commercial device in service.
27. No change
28. No change
29. No change
30. No change
31. No change
32. “Third-party registered service agency” means a registered service agency that performs work under contract for any business or company.
- ~~32-33.~~ No change
- ~~33-34.~~ No change
35. “Vapor recovery registered service representative No. 1” means an individual to whom the Department has issued a license authorizing the individual to conduct all vapor-recovery tests required under A.R.S. Title 41, Chapter 15 or this Chapter including annual vapor-recovery tests.
36. “Vapor recovery registered service representative No. 2” means an individual to whom the Department has issued a license authorizing the individual to conduct the specific vapor-recovery tests necessary to determine whether equipment on which the individual performed maintenance or repairs is operating properly.

34-37. No change

35-38. No change

**R20-2-102. Metrology Laboratory Testing and Calibration Fees**

- A. ~~The For all services of the~~ Department's Metrology Laboratory ~~charges, the Department shall charge the following fees~~ ~~for services:~~
1. ~~\$24.00 for the first hour, or fraction of an hour; and~~
  2. ~~\$40.00 an hour, or fraction of an hour, after the first hour \$110 per hour with a minimum charge of \$50.~~
- B. In addition to the ~~charges fee~~ in subsection (A), the Department shall charge for travel and per diem at the rates established by ~~under~~ A.R.S. §§ 38-623(D) and 38-624(C) for tests or calibrations conducted outside the Metrology Laboratory.

**R20-2-104. Administrative Enforcement Action**

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. No change
1. No change
  2. No change
  3. No change
    - a. No change
    - b. No change
  4. No change
  5. No change
  6. No change
  7. No change
  8. No change
  9. No change
  10. No change
    - a. No change
      - i. No change
      - ii. No change
    - b. No change
      - i. No change
      - ii. No change
- G. No change
1. No change
    - a. No change
    - b. No change
    - c. No change
  2. No change
    - a. No change
    - b. No change
    - c. No change
  3. No change
  4. No change
  5. No change
  6. No change
    - a. No change
    - b. No change
    - c. No change
- H. No change
1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  2. No change

Notices of Proposed Rulemaking

- I. No change
  - 1. No change
  - 2. No change
    - a. No change
    - b. No change
  - 3. No change
  - 4. No change
  - 5. No change
- J. No change
  - 1. No change
  - 2. No change
  - 3. No change
  - 4. No change
  - 5. No change
- K. No change
  - 1. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
  - 4. No change
- L. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
      - i. No change
      - ii. No change
  - 2. No change
  - 3. The Department shall issue an administrative order if a person fails to ~~schedule~~ ensure that an initial test date within 90 days of opening a vapor recovery site passes an initial test within 90 days of being opened or passes an annual test date within the person's designated test month for that year. The Department shall issue a stop-sale, stop-use tag if the person does not comply with the administrative order.
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
- M. No change
  - 1. No change
    - a. No change
    - b. No change
  - 2. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
  - 4. No change
  - 5. No change
  - 6. No change
  - 7. No change
    - a. No change
    - b. No change

- c. No change
- d. No change
- e. No change
- 8. No change
- 9. No change
  - a. Impose a ~~\$300.00~~ \$300 civil penalty on the registered service agency for the first violation, and
  - b. No change
- 10. No change
  - a. No change
  - b. No change
  - c. No change
- 11. No change
  - a. No change
  - b. No change
  - c. No change

**ARTICLE 6. REGISTERED SERVICE AGENCIES AND REPRESENTATIVES**

**R20-2-601. Qualifications; License and Renewal Application Process**

- A. No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
      - i. No change
      - ii. No change
      - iii. No change
    - d. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change
    - c. No change
    - d. No change
    - e. No change
    - f. No change
    - g. No change
    - h. No change
- B.** Third-party registered service agency. In addition to complying with the requirements in subsection (A), a third-party registered service agency shall provide the Department with evidence that the third-party registered service agency:
  - 1. Holds a valid license issued by the Arizona Registrar of Contractors.
  - 2. Complies with workers' compensation insurance laws, and
  - 3. Maintains liability insurance sufficient to cover the value of work to be performed.
- ~~B.C.~~ No change
  - 1. No change
    - a. No change
    - b. No change
    - c. No change
    - d. The applicant has passed a the competency examination specified in subsection (D). ~~An applicant shall bring a copy of Handbook 44 and Handbook 112 to the examination site. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.~~
  - 2. No change
    - a. No change
    - b. No change
    - c. An indication of whether the applicant is applying to be a registered service representative, vapor recovery service representative No. 1, or vapor recovery service representative No. 2;
    - ~~d.~~ No change
    - ~~e.~~ No change

Notices of Proposed Rulemaking

- e.f. No change
- f.g. No change
- 3. An applicant for a vapor recovery registered service representative No. 1 license shall maintain and make available to the Department upon request evidence of being certified by the manufacturer or determined qualified by the Department to test or repair all vapor recovery systems and components.
- D.** Competency examination. Before being issued a registered service representative license, an applicant shall pass a competency examination.
  - 1. An applicant for a vapor recovery registered service representative license shall complete the Department's training class before taking the competency examination.
  - 2. An applicant shall bring a copy of Handbook 44 and Handbook 112 to the examination site.
  - 3. An applicant shall complete the competency examination within the time specified by the Department.
  - 4. The Department shall not allow an applicant to take the competency examination more than two times in six months.
- E.** As required under A.R.S. § 41-2094(G), the Department shall specify on a registered service representative license the devices that the registered service representative may service, repair, or install or the vapor recovery systems or components that the vapor recovery registered service representative may test or repair. A registered service representative shall perform only the services approved by the Department for the registered service representative.
- ~~**E.** To renew a vapor recovery~~ Renewal of a registered service representative license, an applicant shall. Under A.R.S. § 41-2094(D), a registered service representative license is valid for 12 months and expires unless renewed. To renew a registered service representative license, the registered service agency employing the registered service representative shall comply with R20-2-603(E). Before complying with R20-2-603(E), the registered service agency shall ensure that:
  - 1. ~~Complete~~ A vapor recovery registered service representative No. 1 or 2 completes the Department's training class, and
  - 2. ~~Take~~ A vapor recovery registered service representative takes and pass a passes the Department's written vapor recovery competency examination, administered by the Department, as follows:
    - a. A vapor recovery service representative No. 1 shall pass the vapor recovery competency examination annually, and
    - b. A vapor recovery service representative No. 2 shall pass the vapor recovery competency examination biennially.
- ~~**D.** An applicant may not take a registered service representative examination more than two times in six months.~~
- ~~**E.** An applicant shall complete an examination within the time specified.~~
- ~~**F.G.** The Department does not charge a fee to process a change in business name or address.~~

ARTICLE 9. GASOLINE VAPOR CONTROL

**R20-2-901. Material Incorporated by Reference**

The following documents are incorporated by reference and on file with the Department. The documents incorporated by reference contain no later amendments or editions:

- 1. No change
- 2. No change
- 3. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1B, Static Torque of Rotatable Phase 1 Adaptors, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  - g. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1C, Leak Rate of Drop Tube/Drain Valve Assembly, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.
  - h. California Environmental Protection Agency, Air Resources Board Vapor Recovery Test Procedure TP-201.1E, Leak Rate and Cracking Pressure of Pressure/Vacuum Vent Valves, October 8, 2003 edition, California Air Resources Board, P.O. Box 2815, 2020 L. Street, Sacramento, California 95812-2815.

**R20-2-910. Annual Inspection and Testing**

- A.** ~~A person shall ensure that an annual inspection, as required by A.R.S. § 41-2065(A)(15), is conducted by a registered service representative on or before the annual inspection date. The annual inspection date is the last day of the month in which the last scheduled annual inspection was performed. A registered service agency shall notify the Department in writing at least 10 business days before an annual inspection of the time, date, and location of the inspection. The Department shall notify the registered service agency within five business days, by facsimile or electronic mail, whether it~~

*Arizona Administrative Register / Secretary of State*  
**Notices of Proposed Rulemaking**

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approves the annual inspection date and time. The registered service agency shall not perform the annual inspection unless the Department approves the inspection date and time.

- B.** No change
- C.** No change
- D.** No change
- E.** No change
- F.** No change
- G.** No change